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In the Supreme Court of the United States

JEFFREY DEVAN LEONARD,
Petitioner,

v.

THOMAS SIMPSON,
Respondent.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Sixth Circuit

BRIEF *AMICUS CURIAE* OF THE CATHOLIC CONFERENCE OF KENTUCKY IN SUPPORT OF PETITIONER, JEFFREY DEVAN LEONARD

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I

INTEREST OF THE *AMICUS CURIAE*

The Catholic Conference of Kentucky (CCK) is a nonprofit agency of the Catholic bishops of Kentucky, established in 1968.[1] The active bishops of the four dioceses of Kentucky constitute CCK's Board of Directors. The bishops speak collegially for the Church in the Commonwealth through CCK on matters affecting the Catholic Church in the state, its people, and society in general. CCK advocates and promotes the pastoral teaching of the Church on diverse issues, including the protection of human rights and the sanctity of human life. There are 406,000 Catholics in the Commonwealth.

The provision of adequate counsel for the defense of one whom the state intends to execute is unquestionably an essential prerequisite to the moral functioning of the criminal justice process. The concern of the *amicus curiae* is that the process has failed in the case of Jeffrey Leonard because of the woeful representation he received during his trial. The *amicus curiae* has grave reservations concerning the morality of executing Mr. Leonard, especially considering the jury that

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[1] Pursuant to this Court's Rule 37.6, counsel for a party did not author this Brief in whole or in part. No person or entity, other than the Catholic Conference of Kentucky, made a monetary contribution to the preparation or submission of this Brief. Thomas M. Ransdell is an employee of the Kentucky Department of Public Advocacy (DPA). Although other employees of the DPA have represented Mr. Leonard during his post-conviction proceedings, Mr. Ransdell has never served as legal counsel for Mr. Leonard. Mr. Ransdell used leave time and non-working hours to prepare his portion of this brief. The parties have consented to the filing of this Brief. Letters of consent are filed herewith.

sentenced him to death was never allowed to hear the extensive mitigating circumstances in this case.

SUMMARY OF ARGUMENT

If there once was any doubt about the relevance of the views of the religious community in deciding the constitutionality of certain punishments, it was removed by this Court's decision in *Atkins v. Virginia*, 536 U.S. 304 (2002). There a majority of this Court made clear that the views of religious organizations are "[a]dditional evidence" of a broad social and professional consensus against the imposition of the death penalty for a particular class of persons. *Id.*, 536 U.S., at 316 n.21.

In its traditional teaching, the Catholic Church affirms the right and duty of legitimate public authority to inflict punishment proportionate to the gravity of the offense. Recourse to the death penalty is not absolutely excluded. However, recourse to the death penalty should be limited to situations where it is the only possible way of effectively defending human lives against the unjust aggressor. In contemporary society, where the state has other non-lethal means to protect its citizens, the state should not use the death penalty. Nevertheless, if the state chooses to allow capital punishment, the provision of adequate counsel is necessary to ensure that the punishment is not arbitrarily or unjustly imposed.

Jeffrey Leonard did not receive adequate counsel. Every federal judge to review his case has agreed that his attorney did not perform in a reasonably competent manner. Due to his attorney's shortcomings, substantial mitigating evidence was never presented to the jury that sentenced Leonard to death. The *amicus curiae*, Catholic Conference of Kentucky, has

grave concerns about the morality of executing Mr. Leonard under these circumstances.

ARGUMENT

This Court's death penalty jurisprudence since *Furman v. Georgia*, 408 U.S. 238 (1972), has required that the imposition of the death penalty be a reasoned moral response to the personal blameworthiness of the accused. *Lockett v. Ohio*, 438 U.S. 586 (1978); *Eddings v. Oklahoma*, 455 U.S. 104 (1982). The Court has steadfastly recognized that not all who murder should be put to death. *Woodson v. North Carolina*, 428 U.S. 280 (1976); *Sumner v. Shuman*, 483 U.S. 66 (1987); *Roper v. Simmons*, 543 U.S. 551 (2005). The death penalty is reserved for those few who have committed crimes under the most aggravated circumstances, and only after their sentencer has been allowed to give full effect to any mitigating circumstances that would call for a less extreme punishment. *Blystone v. Pennsylvania*, 494 U.S. 299 (1990).

It follows, then, that a decision to impose and carry out a sentence of death is essentially a moral decision. *California v. Brown*, 479 U.S. 538, 545 (1987) (O'Connor, J., concurring). In order to carry moral weight the decision must be based upon an accurate understanding of the relevant facts concerning the circumstances of the offense and the personal moral blameworthiness of the offender. *Gholson v. Estelle*, 675 F.2d 734, 738 (5th Cir. 1982) ("If a person is to be executed, it should be as a result of a decision based on reason and reliable evidence").

In its traditional teaching as summarized in the *Catechism of the Catholic Church*, the Church affirms the right and duty of legitimate public authority "to inflict punishment proportionate to the gravity of the offense." *Id.*, at no. 2266.

Recourse to the death penalty is not absolutely excluded. *See* no. 2267. The death penalty is not intrinsically evil, as is the intentional taking of innocent life through abortion or euthanasia. *See* nos. 2271, 2277. Nevertheless, the Church teaches that in contemporary society where the state has other non-lethal means to protect its citizens, the state should not use the death penalty:

> Assuming that the guilty party's identity and responsibility have been fully determined, the traditional teaching of the Church does not exclude recourse to the death penalty, if this is the only possible way of effectively defending human lives against the unjust aggressor.
>
> If, however, non-lethal means are sufficient to defend and protect people's safety from the aggressor, authority will limit itself to such means, as these are more in keeping with the concrete conditions of the common good and more in conformity with the dignity of the human person.
>
> Today, in fact, as a consequence of the possibilities which the state has for effectively preventing crime, by rendering one who has committed an offense incapable of doing harm -- without definitively taking away from him the possibility of redeeming himself -- the cases in which the execution of the offender is an absolute necessity "are very rare, if not practically non-existent."

Catechism of the Catholic Church, no. 2267 (*quoting* John Paul II, *Evangelium Vitae*, 56).

This universal teaching of the Church is mirrored in the statements of the Catholic bishops of the United States who, "[f]or more than twenty-five years," have "called for an end to the death penalty in our land." Statement of the Administrative Board, United States Catholic Conference, *A Good Friday Appeal to End the Death Penalty* (Mar. 1999). The bishops' appeal to abolish the death penalty is based on their conviction that "in the conditions of contemporary American society, the legitimate purposes of punishment do not justify the imposition of the death penalty." United States Bishops' Statement on Capital Punishment ¶ 9 (Nov. 1980). Our relationship to our Creator is directly connected to what we do to others and how we do it. In the Kentucky pastoral letter "Choose Life: Reflections on the Death Penalty" (1985; re-issued 1995), the bishops of the Commonwealth of Kentucky concluded,

> [T]he death penalty is inconsistent with Jesus' own example of forgiveness that offered hope and the possibility of conversion. It is our judgment that putting human beings to death is a rejection of hope toward the condemned persons and it may deny them the opportunity to move from sin to repentance. The Gospel proclaims that even the most hardened sinner is a person to be redeemed rather than destroyed.
>
> Second, the death penalty is inconsistent with the biblical vision of human beings as worthy of love regardless of their merit.
>
> Finally, the death penalty is inconsistent with our belief as Christians that what we do to other human beings is an indication of our relationship with God.

Id., at 6.

The right to counsel for a defendant to insure a just result has its roots in the Hebrew and Christian Scriptures and is recognized as important by religious leaders today. Most evident from the early Scriptures in this regard are the admonishments by the prophets to those who did not justly and fairly treat the accused "in the gate" of the city, which was the site for the judicial system of the time where justice was administered.[2] Justice for the poor and vulnerable is one of the most pervasive themes in the Old Testament.

Christian leaders today continue the call for insuring justice for the poor. Pope John Paul II taught in "The Gospel of Life: On the Value and Inviolability of Human Life" (1995), "As disciples of Jesus, we are called to become neighbors to everyone (cf. Lk10:29-37), and to show special favour to those who are the poorest, most alone and most in need." In November 2000, the United States Bishops issued

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[2] John J. Pilch, *The Cultural World of Jesus, Sunday by Sunday, Cycle A* 22-24 (The Liturgical Press 1995). ("Trials in ancient Israel were decided by the leading men of the city or synagogue who administered justice 'in the gate' (see Amos 5:15; Deut 19:12))."

Amos 5:7, 15: "Woe to those who turn judgment to wormwood and cast justice to the ground! ...Hate evil and love good, and let justice prevail at the gate; Then it may be that the LORD, the God of hosts, will have pity on the remnant of Joseph."

Job 5:4: "His children shall be far from safety; they shall be crushed at the gate without a rescuer."

Isaiah 29: 20-21: "For the tyrant will be no more and the arrogant will have gone; All who are alert to do evil will be cut off, those whose mere word condemns a man, Who ensnare his defender at the gate, and leave the just man with an empty claim."

a statement on crime and criminal justice, "Responsibility, Rehabilitation, and Restoration: A Catholic Perspective on Crime and Criminal Justice."[3] In that statement, the bishops say:

> The fundamental starting point for all of Catholic social teaching is the defense of human life and dignity: every human person is created in the image and likeness of God and has an inviolable dignity, value, and worth, regardless of race, gender, class, or other human characteristics. Therefore, both the most wounded victim and the most callous criminal retain their humanity. All are created in the image of God and possess a dignity, value, and worth that must be recognized, promoted, safeguarded, and defended.

The bishops also recognized, "The Option for the Poor and Vulnerable: This principle of Catholic social teaching recognizes that every public policy must be assessed by how it will affect the poorest and most vulnerable people in our society."

More recently, the Catholic bishops of Kentucky issued "A Catholic Perspective on Crime and Criminal Justice: A Kentucky Call to Responsibility, Rehabilitation, and Restoration,"[4] which called for Catholic principles and values to be instilled in Kentucky's criminal justice system and recognized that one of those values is that "we all are responsible for all."

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[3] The statement can be found on the Internet at http://www.usccb.org/sdwp/criminal.htm.

[4] Published on the Internet at http://www.ccky.org/Pastoral%20Resources/Ky%20RRR%20Initiative.pdf.

The lower federal courts have all agreed that Jeffrey Leonard did not receive the effective assistance of counsel guaranteed by the Sixth Amendment to the United States Constitution. His attorney admitted conducting virtually no mitigation investigation. The mitigating evidence that was overlooked is detailed in the petition for a writ of certiorari filed on behalf of Mr. Leonard. The jury that sentenced Mr. Leonard to death was never informed that he has possible brain damage from a skull fracture during his childhood. They were never informed he had a childhood skull fracture or even a head injury. They were given an inaccurate picture of Mr. Leonard's mental problems based upon incomplete testing by a state psychologist. They were never informed of the mitigating mental health evidence that was uncovered by independent mental health professionals during the post-conviction proceedings. The jury was never told how, as a child, Mr. Leonard cared for his younger siblings -- how he tried to protect them from abusive adults in the household, and tried to make sure they had food and nourishment. The jury never learned that Mr. Leonard still carries the scars on his body from the childhood beatings he received. Because his trial attorney "made no effort to research [Mr. Leonard's] family background," *Slaughter v. Parker*, 450 F.3d 224, 230 (6th Cir. 2006), the jury never heard Mr. Leonard's mother and two brothers say that they loved him and did not want him to die.

In the past, this Court has insisted on "individualized consideration as a constitutional requirement in imposing the death sentence." *Lockett v. Ohio*, 438 U.S. 586, 605 (1978). The sentencing jury must conduct a "particularized consideration of relevant aspects of the character and record of each convicted defendant before the imposition upon him of a sentence of death." *Woodson v. North Carolina*, 428 U.S. 280, 303 (1976). In *Witherspoon v. Illinois*, 391 U.S.

510, 520 n.15 (1968), the Court said, "[O]ne of the most important functions any jury can perform in making [a selection between life and death in a capital case] is to maintain a link between contemporary community values and the penal system -- a link without which the determination of punishment would hardly reflect 'the evolving standards of decency that mark the progress of a maturing society.'" The jury cannot perform this important function when it is uninformed and misinformed about the evidence that would call for a sentence of less than death due to ineffective representation by the accused's counsel.

The Catholic Church accepts in "principle that the state has the right to take the life of a person guilty of an extremely serious crime ... ." The United States Bishops' "Statement on Capital Punishment" ¶ 4 (Nov. 1980). However, the situations in which the death penalty is an acceptable punishment are extremely rare. Certainly, the death penalty should never be carried out in a case, such as this one, where the accused was prevented from presenting the jury with substantial, material mitigating evidence based on the negligence of his attorney.

CONCLUSION

For the foregoing reasons, the petition for a writ of certiorari to the Court of Appeals for the Sixth Circuit should be granted.

Respectfully submitted,

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